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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,392	12/15/2000	William T. Dalebout	13914.632	1890

7590

12/21/2001

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EXAMINER

AMERSON, LORI BAKER

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 12/21/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No.		Applicant(s)	
	09/737,392		DALEBOUT ET AL.	
	Examiner		Art Unit	
	Lori Baker Amerson		3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 December 2000.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 34 is/are allowed.
- 6) ☒ Claim(s) 1-5,20-33 and 36-41 is/are rejected.
- 7) ☒ Claim(s) 6-19 and 35 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> . | 6) <input type="checkbox"/> Other:  |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Bertoletti [4946160]. Bertoletti discloses an exercise platform having a base 1'; a board 3 upon which a user stands; and an adjustable hub 6A where a first end of the hub is coupled to the base and a second end to the board and the hub causes the board to tilt in any direction. The hub moves laterally or by flexing to cause the board to tilt in any direction. The hub is a two part member. An exercise mechanism 22 is coupled to the platform to modify the platform. The mechanism comprises at least one handle coupled to the board that is stretchable. The first end of the handle is to be held by the user while the second end is couple to the board.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bertoletti as applied to claim 1 above and further in view of Vaughan [5062629]. Bertoletti discloses a tilt adjuster 4,5 movably coupled but does not disclose the hub comprised of

a flexible connector. Vaughan teaches a flexible connector 16. It would have been obvious to one of ordinary skill in the art at the time the invention was made to design the hub of a flexible element in order to allow the board to move in any direction.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bertoletti as applied to claim 1 above. Bertoletti does not disclose a non-slip material on the upper surface of the board, but it is obvious to one of ordinary skill in the art to place a non-slip surface on an exercise device to prevent injury to the user while the device is in use.

Claims 25-33 and 36-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bertoletti as applied to claim 1 above and further in view of Vaughan [5062629]. Bertoletti discloses a first support 3 for the user to stand upon; a second support 1' placed on the surface; a tilt adjuster 4,5 interposed between the two supports to restrict movement of the first toward the second. Bertoletti discloses all of the limitations of the claimed invention except for a flexible connector. Vaughan teaches a flexible connector 16 that allows the weight of the user and movement of the user to cause the supports to move. It would have been obvious to one of ordinary skill in the art at the time the invention was made to design the hub of a flexible element in order to allow the board to move in any direction. Regarding adjustability of the adjuster, Adjustability, where desirable, is a modification that is within the skill of the art. In re Stevens, 212 F.2d 197, 101 USPQ 284 (CCPA 1954). The platform has at least on handle 22 that is stretchable

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and the user holds one end while the other is coupled to the board. Regarding one or more handles, The Applicant should note that duplicating the components of a prior art device is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

### ***Allowable Subject Matter***

Claims 6-19 and 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 34 is allowed. The prior art of record fails to teach or suggest a wobbly apparatus or exercise platform comprising a flexible connector having a top abutment member set and adjuster that has one or more bottom abutment member sets that are aligned together to restrict movement of the board.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lori Baker Amerson whose telephone number is (703) 306-5576. The examiner can normally be reached on Monday thru Friday from 8-5 p.m.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeanette Chapman can be reached on (703) 308-1310. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5648.

Lba  
December 11, 2001

  
JEANETTE CHAPMAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700